as a denial of the equal protection of the laws.[16] The alien is being arbitrarily deprived of an opportunity of employment which the citizen of the United States enjoys. While it is true that no one is entitled, as of absolute right, to employment by the State,[17] nevertheless, the alien should not be put at a disadvantage by the denial of the opportunity to ask for such employment, nor should the State be allowed, under the guise of prescribing conditions,[18] to deprive him of the equal protection of the laws.[19]

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SOME ATTRIBUTES OF LEASEHOLDS UNDER MODERN STATUTES.—In the recent case of *Spiro* v. *Robinson* (Ind. App. 1914) 106 N. E. 726, a wife made a lease of her separate real estate in her own name. The court upheld the transaction, deciding that the statute forbidding a conveyance or incumbrance by the wife of her property without joining her husband, did not apply to a lease. Since the word conveyance is limited, in the usual sense of the word, to transactions in real property,[1] the court logically held that the term is not properly applicable to a leasehold interest, and in so deciding is in accord with the great weight of modern authority construing similar provisions in the Married Women's Acts.[2] This construction is justified on the ground that the right to lease her property is a necessary incident to the wife's complete enjoyment thereof,[3] and clear expression should be required of the legislative intent to deny such right. Under the homestead statutes, which forbid a conveyance by the husband without his wife's consent, the courts have maintained the logical view as well, as long as the lease by the husband does not disturb his wife's possession in the premises.[4] Where, however, the lease would have the effect of unsuiting the homestead for the purposes of a residence, the courts have departed from the strict construction, in order to render substantial justice, and have denied the husband's sole right.[5] The tendency is to construe these statutes so as to protect the wife whenever possible.

It may be stated as a general proposition that the word conveyance has been construed as not to embrace in its meaning a term for years.[6] Where, however, the result will be to cause actual injustice,

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[16]See Gulf etc. Ry. *v.* Ellis (1897) 165 U. S. 150; Yick Wo *v.* Hopkins, *supra.*

[17]Atkin *v.* Kansas, *supra,* 223: "No employee is entitled, of absolute right, and as a part of his liberty, to perform labor for the state."

[18]The State is not prescribing conditions when it makes arbitrary discrimination. Atkin *v.* Kansas, *supra,* 224.

[19]People *v.* Warren, *supra*; but see People *v.* Ludington's Sons, *supra.*

[1]See Perkins *v.* Morse (1885) 78 Me. 17; Abbott's Law Dictionary, 285; see Bouvier's Law Dictionary, Rawle's Third Revision, 671.

[2]Sullivan *v.* Barry (1884) 46 N. J. L. 1; Perkins *v.* Morse, *supra*; see Vandevoort *v.* Gould (1867) 36 N. Y. 639; but see Buchanan *v.* Hazzard (1880) 95 Pa. 240; Dority *v.* Dority (1903) 96 Tex. 215.

[3]See Sullivan *v.* Barry, *supra.*

[4]See Engelhardt *v.* Batla (Tex. Civ. App. 1895) 31 S. W. 324.

[5]Mailhot *v.* Turner (1909) 157 Mich. 67.

[6]Under the usual recording acts, providing simply for the recordation of conveyances, a lease need not be recorded. Tuohy's Estate (1899) 23 Mont. 305. In many States, however, of which New York is a prominent

as in the case of leases for a long term, the strict construction is often relaxed. Although the long term lease has been uniformly said, in absence of statute, to constitute personal property,[7] the courts are nevertheless ready to recognize the essential nature of these interests in order to carry out the actual intention of the legislature, and have, accordingly, decided that they amount to conveyances, on the ground that a lease for a long term has all the practical effects of conveying the fee.[8] The same propensity has been shown in the construction of mining[9] and timber[10] leases, which, however, provide from their very nature for the severance of substantial portions of the realty, and may, therefore, be said to be conveyances even in the technical sense.

In holding that a lease is not an incumbrance, the court in the principal case undoubtedly decided correctly. An incumbrance refers to an interest in the nature of a pledge or mortgage,[11] rather than to a personal contract such as a lease.[12] Nevertheless, when a conveyance of real estate includes a covenant against incumbrances a prior leasehold interest will constitute a breach of the covenant.[13] Where the sale is made for purposes of resale or development, the existence of a prior leasehold will usually interfere with the complete enjoyment of the vendee's estate,[14] and the courts seem justified in disre-

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example, the recording act provides specifically that a conveyance shall include leaseholds, except for a term not exceeding three years. N. Y. Consol. Laws, Real Property Law, § 290. An assignment of a lease as security, need not, however, be recorded either as a real estate mortgage, or as a chattel mortgage. Booth *v.* Kehoe (1877) 71 N. Y. 341; see Hutchinson *v.* Bramhall (1886) 42 N. J. Eq. 372, overruling Decker *v.* Clark (1875) 26 N. J. Eq. 163.

Another question arises where the statute provides, as it does in New York, that implied covenants in real estate are abolished. See 1 Rev. Stat., 738. It was at first decided, by applying the definition given in the Recording Act, Art. 9, § 290, that there were no implied covenants in leaseholds for over three years. Kinney *v.* Watts (N. Y. 1835) 14 Wend. 38. Nevertheless, by a subsequent application of the principle of strict construction, this case was overruled and the law in this State was settled that implied covenants in leaseholds have not been abolished. Tone *v.* Brace (N. Y. 1845) 11 Paige 566; see New York *v.* Mabie (1855) 13 N. Y. 151; but see Koeber *v.* Somers (1901) 108 Wis. 497, overruling Shaft *v.* Carey (1900) 107 Wis. 273.

[7]Bracton, 27; 1 Reeves, Real Property, 586.

[8]State *v.* Morrison (1898) 18 Wash. 664; but see Perkins *v.* Morse, *supra.*

[9]Waskey *v.* Chambers (1912) 224 U. S. 564; but see Heal *v.* Niagara Oil Co. (1897) 150 Ind. 483.

[10]Milliken *v.* Faulk (1895) 111 Ala. 658.

[11]See Sullivan *v.* Barry, *supra.*

[12]It is possible that a lease for a sufficiently long term will constitute an incumbrance. See Lockwood *v.* Middlesex etc. Co. (1880) 47 Conn. 553, 559.

[13]See Van Wagner *v.* Van Nostrand (1865) 19 Ia. 422; note to case of Musial *v.* Kudlick (Conn. 1913) 34 Ann. Cas. 1172, 1176; Rawle, Covenants for Title (5th ed.) § 76.

[14]See Hoover *v.* Chambers (1887) 3 Wash. Terr. 26, 30, in which the court, in distinguishing the conditions of leaseholds in England from those in the United States, said: "There land is generally in large holdings, here in small; there rent is principally sought, here possession; there the value of land is comparatively fixed and stable, here it is fluctuating and

garding the technical meaning of the term incumbrance. Where, however, the vendee has bought land for purposes of investing in the rents and profits of the estate, the presence of leaseholds is assumed to have been contemplated by the parties to the contract, and the covenant against incumbrances is not, therefore, held infringed.[15]

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ENFORCEMENT OF ULTRA VIRES CONTRACTS.—Corporations are considered creatures of the law, having only such rights and powers as the legislature has conferred upon them.[1] According to the strict theorists, acts of a corporation beyond its charter limits are null in the eyes of the law, but theoretical concepts of corporations have frequently been forced to yield to practical expediency.[2] It has been asserted, on the other hand, that corporations have the power to exceed their charters just as individual persons can exceed their rights,[3] a contention that finds no small support in the universal liability of a corporation for its torts.[4] Yet even under the latter more liberal view, acts beyond the authorized limit are contrary to the law, and an illegal contract cannot be the basis of an action.[5] There would seem to be considerable logic with the Supreme Court, and the courts of last resort of many of the States of this country, in maintaining the strict doctrine of *ultra vires,* that a contract made by a corporation in excess of its granted powers is void.[6]

In opposition to the foregoing decisions, however, there is a large group typified by the recent case of *Seamless Pressed Steel, etc. Co.* v. *Monroe* (Ind. 1914) 106 N. E. 538, which reject the stricter theory to the extent of allowing a party who has performed his share of an *ultra vires* contract to recover on the contract itself.[7] It may be well to examine the theory on which this position depends. These courts do not classify contracts in excess of chartered powers with those against public policy, or in violation of positive statute, on which

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generally and rapidly appreciating; there land is capital, here it is a commodity; there its uses remain largely the same from generation to generation, here they are infinitely varied, and changeable with every new possessor." It is submitted that the nature of leaseholds in our large cities approximates more nearly to conditions in England than to conditions in other parts of the United States.

[15]See Rawle, Covenants for Title (5th ed.) 91, note; Hoover *v.* Chambers, *supra.*

[1]Thomas *v.* Railroad Co. (1879) 101 U. S. 71; 2 Kent, Comm., *298.

[2]Prof. I. M. Wormser, Piercing the Veil of Corporate Entity, 12 Columbia Law Rev., 496.

[3]2 Morawetz, Private Corporations, §§ 648, 649.

[4]Salt Lake City *v.* Hollister (1886) 118 U. S. 256; Bissell *v.* Michigan etc. R. R. (1860) 22 N. Y. 258.

[5]15 Columbia Law Rev., 175.

[6]Central Transportation Co. *v.* Pullman's etc. Co. (1891) 139 U. S. 24; First Nat. Bank *v.* American Nat. Bank (1903) 173 Mo. 153; see Leigh *v.* American Brake-Beam Co. (1903) 205 Ill. 147.

[7]Bath Gas Light Co. *v.* Claffy (1896) 151 N. Y. 24; McQuaig *v.* Gulf Naval Stores Co. (1908) 56 Fla. 505; see Eastman *v.* Parkinson (1907) 133 Wis. 375.